

Testimony
United States Senate Committee on the Judiciary
Improving the Administration of Justice: A Proposal to Split the Ninth Circuit.
April 7, 2004

The Honorable John Ensign
U.S. Senator , Nevada

1.

STATEMENT OF SENATOR JOHN ENSIGN, NEVADA

Hearing before the United States Senate Committee on the Judiciary,
Subcommittee on Administrative Oversight and the Courts:
“Improving the Administration of Justice: A Proposal to Split the Ninth Circuit”

April 7, 2004

Good morning. The Ninth U.S. Circuit Court of Appeals, because of its enormous and growing caseload, has become unmanageable. A solution to this looming judicial crisis is long overdue. The court stretches from Mexico to Alaska, from Utah to Hawaii. This Circuit is home to nearly 20% of the population of the country. This Circuit recently had more cases pending for more than a year than all the other 10 circuits combined. And any examination of past and current population growth trends shows that the Ninth Circuit will only become more overloaded.

It is time to divide the Ninth Circuit. The citizens of nine states and two territories face inadequate access to justice, and this problem is only growing worse. Currently, the Ninth Circuit Court handles almost one-fifth of the entire federal appellate caseload, and the delays in providing adequate justice and providing redress for these cases is increasing.

Today I would like to focus solely on the issue of caseload. Earlier proposals to divide the Ninth Circuit have tended to focus on a division in two. Unfortunately, a division in two won't fully address the population trends of the Western states and will not resolve the stifling overload of cases the Ninth Circuit currently faces. Nevada, Arizona, and Idaho rank first, second and fifth respectively in the top five fastest growing states in the 2000 census. Additionally, California, Washington, Oregon, Alaska, and Montana rank in the top 20, all with double-digit growth.

In each of the last seven years, the Ninth Circuit has led the nation in the number of appeals filed, and that number continues to expand exponentially. Currently, the Court of Appeals has the highest number of cases pending for at least three months, six months, nine months, and a year. Given the population growth in each of the states in the Ninth Circuit, this problem will likely only get worse.

These delays dramatically reduce the fundamental fairness in the administration of justice for one in every five Americans.

The problems of a circuit this large lead to conflicting interpretations and a lack of coherence in interpreting the law that affect not only the practitioners but also the citizens of these states. When the Ninth Circuit can hand down two decisions that address the same issue on the very same day—one that establishes a two part test and the other a three part test—the people of the Western States face a very serious problem in the administration of justice.

My proposal for division of the Ninth Circuit, S. 2278, addresses these concerns and provides for judicial expediency well into the future. By creating a new Twelfth and Thirteenth Circuit, we are able to grapple with the booming populations of the Sunbelt states and provide better administration to the people of the new Ninth Circuit.

The new Ninth Circuit Court would be allotted five additional permanent judges and two new temporary judges, all to be nominated in the next presidential term. My proposal also allows for each Chief Judge in the new Ninth, Twelfth, and Thirteenth Circuits to temporarily allocate resources between the circuits to ensure a smooth transition. Additionally, no split will happen until these judges are in place so that the citizens remaining in the Ninth Circuit have access to justice and the judges are in place to properly administrate the appeals process.

Additionally, my proposal ensures that all cases currently pending in the Ninth Circuit prior to the effectiveness date of the legislation will be resolved as if the split were not in effect, meaning all current litigants would be unaffected by any division.

In short, it is time to deal with the looming crisis that affects the citizens of the entire western portion of the United States. It is time to address the fact that the administration of justice for the citizens of the Ninth Circuit is becoming fundamentally unfair. And it is time to look to the future needs of our fastest growing states.